CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 1670 of 2011

(Arising out of Order-in-Appeal No. 30/2011 dated 17.03.2011 passed by the Commissioner (Appeals), Mangalore.)

M/s. Primacy Industries Limited,
Plot No. 7A,
Baikampady Industrial Area,
Mangalore – 575 011.

Appellant(s)

VERSUS

The Commissioner of Central Excise,
5th Fifth Floor,
Trade Centre,
Bunts Hostel Road,
Mangalore – 575 003.

Respondent(s)

APPEARANCE:

Ms. Lakshmi. G.K, Chartered Accountant for the Appellant

Mr. Neeraj Kumar, Superintendent (AR) for the Respondent

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20974 / 2025

DATE OF HEARING: 04.06.2025
DATE OF DECISION: 04.06.2025

PER : R. BHAGYA DEVI

This appeal is filed by the appellant M/s. Primary Industries against Order-in-Appeal No. 30/2011 dated 17.03.2011 passed by the Commissioner (Appeals), Mangalore.

2. Briefly the facts are that the appellant is a service provider under the category of 'Goods Transport Agency (GTA) Services' and are also engaged in manufacture of wax candles under the 100% Export Oriented Unit (EOU) scheme. The appellant had

filed a refund claim on 30.09.2009 for Rs. 1,13,297/- in terms of Notification No. 41/2007-ST dated 06.10.2007. The refund was sanctioned only to the extent of service tax amount of Rs.34,976/- and the balance amount was rejected on the ground that there was no correlation between the services rendered and the input-output documents produced and secondly, on the ground that the said Notification did not allow refund of the Education Cess and Secondary and Higher Education Cess. Aggrieved by this order, they preferred an appeal before the Commissioner (A), who upheld by the order of the Original Authority. Aggrieved by this order, appellant is in appeal before us.

2. The Learned Chartered Accountant (A) submitted that the appellant is a 100% Export Oriented Unit (EOU) and that there is no dispute that the services were used in the export of goods. However, the amount rejected on the ground that there is no correlation between the input-output services cannot be sustained since all the services were used for export of goods, which is not in dispute. In this regard, she relies on the decision in the case of **UOI Vs. Arihant Tiles and Marbles (P) Ltd.: 2019 (20) GSTL 21 (Raj.)** and **Kotak Ginning and Pressing Indus Ltd. vs. CST: 2018 (14) GSTL 392 (Tri.-Mumbai)**. With regard to cess, the learned CA relied on the decision in the case of **Tumkar Minerals Pvt. Ltd. vs. Commissioner of Central Excise, Goa: 2016 (41) STR 434 (Tri.-Mumbai).**

3. The Authorised Representative (AR) for the Revenue reiterated the findings recorded in the impugned order.

4. Heard both sides. We find that the refund has been rejected on terminal handling charges, wharfage charges, Custom House Agency service, collection of export bills etc. As seen from the nomenclature of the above services, it is crystal clear that the above services are used in the export of goods manufactured by the appellant. Once of the services listed in the

Notification No. 41/2007-ST dated 06.10.2007 is port services that are provided for export of said goods, benefit of Notification cannot be denied.

5. The Hon'ble High Court of Rajasthan in the case of **Union of India vs. Arihant Tiles and Marbles (P) Ltd.** (supra) in a similar set of facts held as follows:

> **"3.** The order dated 7-7-2010 was challenged before the CESTAT by the respondent assessee on various grounds but the Learned CESTAT while considering the Notification No. 41/2007 gave finding that it is an admitted fact of the record that the services towards terminal and other handling services were availed by the assessee within the port area, in connection with export of the goods. Thus, irrespective of classification of service, since the same are provided within the port for export of goods, the benefit of refund should be available under the head port services in terms of notification dated 6-10-2017. The Tribunal held that in case of Shivam Exports, SRF Ltd., and AIA Engineering it has been held that irrespective of the classification of service, if the services are provided within the port, the same should qualify as port service for the purpose of benefit of refund. Whiling giving aforesaid finding, the CESTAT held that in view of the factual position, the assessee is eligible for refund of Rs. 16,72,923/-.
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> **4.** In our the finding recorded by the Learned CESTAT is based upon factual aspect of the matter and therefore, no substantial questions of law emerges for consideration in this regard. With regard to the JTA service availed for transportation of goods from the place of removal to the port of export, the Learned Tribunal held that refund claim was filed after issuance of the notification No. 3/2008, dated 19-2-2008 and in identical situation in case of East India Minerals Ltd. the refund claim was allowed, therefore, assessee is entitled for refund of Rs. 1,00,742/- paid on transportation charges for transport of goods from place of removal to the port of export.
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> **5.** In our opinion, there is no error in the finding given by the Learned CESTAT for refund of GTA services, therefore, no

> substantial question of law emerges for consideration in this appeal for the said amount".

In view of the above decision, as long as services are used within the port area for the export of goods, they are eligible for the benefit of the Notification and hence, the rejection of the refund claim cannot be sustained. With regard to Cess, the Tribunal in the case of **Tumkar Minerals Pvt. Ltd.** (supra) held that as long as goods are exported, the benefit of refund of Education Cess cannot be denied.

6. In view of the above, the impugned order is set aside and the appeal is allowed.

(Operative portion of the order was pronounced in Open Court on conclusion of hearing.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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